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September 2, 2015

Richard Bastien  
16 Oriole Street, Unit 4  
Gardner, MA 01440

Re: Initiative Petition No. 15-22: Initiative Petition for a Law Relative to Establishing  
the Sales and Use of Consumer Fireworks in the  
Commonwealth

Dear Mr. Bastien:

In accordance with the provisions of Article 48 of the Amendments to the Massachusetts Constitution, we have reviewed the above-referenced initiative petition, which was submitted to the Attorney General on or before the first Wednesday of August of this year. I regret that we are unable to certify that the measure complies with Article 48, the Initiative, Part 2, Section 3, which requires in pertinent part that the measure “contain[] only subjects . . . which are related or which are mutually dependent.” As explained below, the measure proposes a law that would have as its subjects reducing the regulation of consumer fireworks and of non-firework explosives, which subjects have no meaningful operational relationship to one another. Therefore, we must decline to certify the petition.

Our decision, as with all decisions on certification of initiative petitions, is based solely on art. 48’s legal standards and does not reflect the Attorney General’s policy views on the merits of the proposed law. Below, we set forth the provisions of the proposed law and then explain why it cannot be certified under art. 48.

A. Pertinent Provisions of the Initiative Petition

The measure provides generally that consumer fireworks (as defined in the proposed law) could be sold in Massachusetts by persons 21 years of age or older with federal and state licenses and—where applicable—municipal permits. The measure would direct the state Secretary of Public Safety and Security to issue rules for the storage and handling of consumer fireworks and would prohibit the sale of fireworks to, or possession of fireworks by, persons under 18 years of age. The measure would set forth civil and criminal penalties for its violation and administrative procedures for violations of licensure requirements. The proposed law would restrict when consumer fireworks could be used and would prohibit their use on private property unless the

property owner has given permission. The measure would repeal a number of existing statutes, including those governing the sale, possession, and use of fireworks, G.L. c. 148, § 39; professional supervised fireworks displays, G.L. c. 148, §§ 39A, 42; storage of fireworks, G.L. c. 148, § 40; and ship and railway signals, G.L. c. 148, § 44.

The petition would also repeal G.L. c. 148, § 12. See Initiative Petition No. 15-22, § 12. In addition to requiring local approval for manufacture of fireworks, Section 12 of Chapter 148 includes several provisions unrelated to fireworks. Section 12 requires a permit from the state Fire Marshal for manufacture or storage of any explosive materials. It also prohibits the sale, transfer, or exchange of explosive materials to anyone who does not possess the necessary permits or who does not maintain a proper storage chamber. It also stipulates that records showing the amount, location, or nature of explosive material in the Commonwealth shall not be public records and sets forth civil and criminal penalties for violation of its provisions.

B. The Petition Contains Subjects That Are Not Related or Mutually Dependent

The proposed law cannot be certified because it does not contain “only subjects . . . which are related or which are mutually dependent[.]” Art. 48, Init., pt. 2, § 3. In reviewing a certification petition, the Attorney General must determine that “one can identify a common purpose to which each subject . . . can reasonably be said to be germane.” Massachusetts Teachers Association v. Secretary of the Commonwealth, 384 Mass. 209, 219 (1981).

More recently, the court has required that the provisions of a proposed measure bear a “meaningful operational relationship” to one another, so as to “permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy.” Carney v. Attorney General, 447 Mass. 218, 220, 231 (2006). “It is not enough that the provisions in an initiative petition all ‘relate’ to some same broad topic at some conceivable level of abstraction[;] [t]o clear the relatedness hurdle, the initiative petition must express an operational relatedness among its substantive parts.” Id. at 230-31. This requirement was not met, the Carney court concluded, where “there [was] no meaningful operational relationship between [provisions] which would amend criminal statutes penalizing animal abuse, and [provisions], which would dismantle the legitimate business of parimutuel dog racing.” Id. at 231.

The Carney court viewed the relatedness requirement as designed to bar petitions from joining “alluring” provisions to “controversial” provisions in a way that would confuse the average voter. Id. at 228-29; see also Abdow v. Attorney General, 468 Mass. 478, 499-504 (2014) (petition may not meet relatedness requirement if it includes subjects with only a marginal relationship to one another such that voters may be confused or placed in the untenable position of having to cast a single vote on dissimilar subjects).

In determining whether a petition contains only subjects that are related or mutually dependent, the SJC may consider whether all subjects in the petition are “germane to a general subject” or whether a “common purpose” can be identified. Id. at 501-01. Here, while many of the provisions of the proposed law deal with the common theme of legalizing and regulating the



sale, use, and possession of consumer fireworks, other provisions do not bear a “meaningful operational relationship” to the remainder of the petition such that a reasonable voter could not affirm or reject the entire petition as a unified statement of public policy.

The first sentence of G.L. c. 148, § 12, which the petition would repeal, governs the manufacture of fireworks and, therefore, is arguably related to the subjects treated in the rest of the petition. The remainder of G.L. c. 148, § 12, however, restricts the manufacture, storage, sale, or transfer of all explosive material. Section 12 also exempts “any information, data or record maintained by the marshal or his agents or designees, in any form, relative to the amount, location or nature of explosive material in the commonwealth” from disclosure under the state public records law.

We have not been supplied with, nor can we conceive of, a unified statement of the public policy that would be served by legalizing and regulating consumer fireworks and repealing all requirements for the transfer and storage of other explosives. Reasonable voters may wish to legalize the sale of consumer fireworks without also repealing safety provisions for other explosives. See Carney, 447 Mass. at 230-31 (reasonable voter should be able to affirm or reject entire petition as a unified statement of public policy); cf. Abdow, 468 Mass. at 503 (holding that voters could reasonably vote for or against the common purpose of abolishing casino gaming). This petition joins the divergent subjects of consumer fireworks and non-firework explosives, which are not meaningfully operationally related to each other. See Carney, 447 Mass. at 230. Because the Attorney General is unable to determine a common purpose to which these subjects are reasonably germane, MTA, 384 Mass. at 219-20, she must decline to certify the petition.<sup>1</sup>

For the foregoing reasons, we are unable to certify Petition 15-22 as meeting the requirements of art. 48.

Very truly yours,



Juliana deHaan Rice  
Deputy Chief, Government Bureau  
617-963-2583

cc: William Francis Galvin, Secretary of the Commonwealth

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<sup>1</sup> We therefore need not reach the question whether the proposed law’s repeal of provisions governing professional supervised fireworks displays poses an additional “relatedness” problem. See Initiative Petition No. 15-22, §§ 14, 16. Moreover, Section 7 of the petition would require that fines collected for violations of certain provisions of the proposed law be deposited into a “non-lapsing account” to be used for purposes of enforcing the proposed law. It may be that this provision “makes a specific appropriation of money from the treasury of the commonwealth” and therefore may not be proposed by initiative petition. See Art. 48, Init., pt. 2, § 2. We do not reach this issue because we conclude that the petition may not be certified on relatedness grounds, as set forth herein.